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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN L. EDMONDS, individually and as a Managing
General Partner of FIFTH AND
106TH STREET HOUSING COMPANY, INC.,
LOGAN PLAZA ASSOCIATES, LP CHARLES H.
ASSOCIATES a/k/a CHARLES H. HILL
ASSOCIATES, LP AND AS A LIMITED PARTNER
OF CHURCH HOME ASSOCIATES, LP,

Plaintiff,

- against -

ROBERT W. SEAVEY, individually and as a General
Partner of FIFTH AND 106TH STREET ASSOCIATES,
LP, LOGAN PLAZA ASSOCIATES, LP, CHARLES
HILL ASSOCIATES, CHARLES HILL ASSOCIATES,
LP and as a Limited Partner of CHURCH HOME
ASSOCIATES, LP; PHYLLIS M. SEAVEY, individually
and as owner, manager and member of DALTON
MANAGEMENT COMPANY LLC; AVERY B.
SEAVEY, individually and as a General Partner of
LOGAN PLAZA ASSOCIATES, LP, CHURCH
HOME ASSOCIATES and owner of DALTON
MANAGEMENT COMPANY, LLC; and RONALD
DAWLEY, as Chief Executive Officer of DALTON
MANAGEMENT COMPANY, LLC;
DALTON MANAGEMENT COMPANY, LLC, and
THE SEAVEY ORGANIZATION; and MARKS
PANETH & SHRON, Auditors,

Defendants.

08 – CV – 5646 (HB)

**DECLARATION IN SUPPORT
OF MOTION PURSUANT TO
Fed. R. Civ. P. 11**

William J. Kelly, an attorney admitted to practice before this Court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am associated with the law firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for defendant Marks, Paneth & Shron, LLP, sued here as “Marks, Paneth & Shron, Auditors” (“Marks Paneth”). I submit this declaration in support of defendants’ Marks Paneth’s motion pursuant to Federal Rule of Civil Procedure 11 seeking sanctions for the filing of a frivolous pleading, namely, the complaint in this action as against Marks Paneth and an Affidavit dated June 17, 2008.

2. Attached hereto as Exhibit A is a copy of the Verified complaint in this action filed by plaintiff on or about June 23, 2008. By motion filed December 16, 2008, Marks Paneth moved to dismiss the complaint (Docket Entry 22). That motion is fully briefed and is currently awaiting a decision by the court.

3. Attached hereto as Exhibit B is a copy of the Affidavit of John Edmonds, dated June 17, 2008, and submitted at various times in this litigation including in connection with the initial Order to Show Cause (D.E. 3) and in opposition to Marks Paneth’s motion to dismiss (D.E. 32:1-4). The copy of the affidavit attached hereto is without the voluminous exhibits.

4. Attached hereto as Exhibit C is a copy of the management agreement between Church Homes Associates (one of the partnerships involved in the dispute) and Dalton Management (a co-defendant), which was submitted as Exhibit G to the Edmonds Affidavit.

5. Since the filing of the Verified Complaint, the parties have conducted

extensive discovery. Attached hereto as Exhibit D is a copy of the deposition of plaintiff John Edmonds, taken in connection with this action on April 17, 2009.

6. Attached hereto as Exhibit E is a copy of the deposition of plaintiff's accountant Orley Cameron, taken in connection with this action on April 21, 2009.

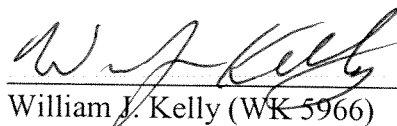
7. Attached hereto as Exhibit F is a copy of the deposition of plaintiff's accountant Adam Pryce, taken in connection with this action on April 22, 2009.

8. Attached hereto as Exhibit G is a copy of a report provided by plaintiff's accountants/auditors to plaintiff dated November 29, 2007. This is only one of two written reports provided to plaintiff from his accountants, which form the basis of the claims against the defendants, especially those claims against Marks Paneth.

9. Attached hereto as Exhibit H is a copy of the second and last written report provided by plaintiff's accountants/auditors to plaintiff dated December 12, 2007.

10. For the reasons set forth in the accompanying memorandum of law, Marks Paneth respectfully requests that this court issue an order pursuant to Fed. R. Civ. P. 11 awarding sanctions against plaintiff for filing a frivolous action against Marks Paneth. Furthermore, movant requests that the sanction be an award of attorneys fees incurred by Marks Paneth in defending this frivolous claim.

Dated: White Plains, New York
July 1, 2008


William J. Kelly (WK 5966)